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ONE HUNDRED TENTH CONGRESS

**U.S. House of Representatives**  
**Committee on Energy and Commerce**  
**Washington, DC 20515-6115**

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October 15, 2007

DENNIS B. FITZGIBBONS, CHIEF OF STAFF  
GREGG A. ROTHSCHILD, CHIEF COUNSEL

The Honorable Jim Nussle  
Director  
Office of Management and Budget  
Executive Office of the President  
725 17<sup>th</sup> Street, N.W.  
Washington, D.C. 20503-0009

Dear Director Nussle:

On August 11, 2005, President Bush signed into law the National All Schedules Prescription Electronic Reporting Act (NASPER), (Public Law 109-60). The passage of NASPER in the 109<sup>th</sup> Congress was the result of extensive hearings and bipartisan and bicameral agreement on the most effective Federal approach to combating the growing problem of prescription drug abuse. NASPER authorizes the Department of Health and Human Services (HHS) to provide grants to States to establish and improve prescription drug monitoring programs (PDMPs). The law authorizes \$15 million in fiscal year (FY) 2007 and \$10 million each year through FY2010.

The statutory scheme established by NASPER strikes an appropriate balance between the public interest in ensuring patient access to necessary and legitimate medical treatment, while at the same time, detecting and preventing the diversion of controlled substances. The NASPER program, administered by HHS, provides an important complement to the President's Health Information Technology Plan, for which HHS is the lead Executive Branch agency, and draws on the medical privacy and health technology expertise at HHS. It is noteworthy that a significant majority of the States that already have established PDMPs have elected to administer those programs through their State health departments, rather than their law enforcement agencies. We believe that this trend reflects the growing recognition that prescription drug abuse is a critical public health issue that must be addressed "on the front end," by healthcare providers prescribing and dispensing controlled substances, as well as a law enforcement problem that must be addressed with optimal tools. In recognition of these dual public policy challenges, the NASPER program ensures that law enforcement officials have consistent and uniform access to dispensing data for purposes of drug diversion investigations, while healthcare practitioners have ready access to patient prescription histories so that they can best address the patient's legitimate medical needs.

In passing NASPER two years ago, Congress intended to enable healthcare practitioners and law enforcement officials to detect and thwart "doctor shopping" by addicts crossing State lines by ensuring that State PDMPs could share prescription data based on uniform data collection and privacy protections. For that reason, NASPER requires that grantee States adopt health information interoperability standards, including health vocabulary and messaging standards, and be capable of achieving interoperability with at least one other State. We are concerned that all but two States that currently operate PDMPs still cannot exchange data with each other, and have little incentive to do so. In addition, a number of the States operating PDMPs do not track all scheduled drugs, do not consistently make prescription data available to both law enforcement and healthcare providers, and otherwise fail to achieve the minimum standards that NASPER imposes.

In the 109<sup>th</sup> Congress, the Committee wrote on January 13, 2006, to request that the Office of Management and Budget (OMB) ensure that funding for NASPER was included in the President's 2007 budget, as NASPER is the only Federal program statutorily authorized to assist State PDMPs. Because of the timetable in the statute, it was and is critical that funding be made available so that HHS can promulgate regulations, seek public input, and begin the grant process immediately. Notwithstanding, the Administration included funding not only in its FY2007 budget, but also in the FY2008 budget for an unauthorized grant program administered by the Department of Justice, and failed to include funds for the program in the bill signed into law by the President.

The Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce will hold a hearing on October 24, 2007, entitled "NASPER: Why Has the National All Schedules Prescription Electronic Reporting Act Not Been Implemented?" It is important to the Committee that OMB participate in the hearing and testify on the status and funding of the NASPER program. Concurrently with this letter, you will receive an invitation to appear at the hearing. We look forward to your appearance, and would appreciate your providing the Committee staff with a briefing in advance of the hearing.

Sincerely,



Bart Stupak  
Chairman  
Subcommittee on Oversight and Investigations



Ed Whitfield  
Ranking Member  
Subcommittee on Oversight and Investigations

**Congress of the United States**  
**Washington, DC 20515**

January 10, 2006

The Honorable Joshua B. Bolton  
Director  
Office of Management and Budget  
Executive Office of the President  
725 17th Street, NW  
Washington, DC 20503-0009

Dear Director Bolton:

We are writing to request that you include \$15 million in the Administration's FY 07 Budget for the National All Schedules Prescription Electronic Reporting Act (NASPER), P.L. 109-60.

On August 11, 2005 President Bush signed NASPER into law, making it the only statutorily authorized program to assist states combat prescription drug abuse of controlled substances through prescription drug monitoring programs (PDMPs). NASPER, administered by the Department of Health and Human Services (HHS), provides grants to states to establish and improve PDMPs. The law authorizes \$15 million in FY 07 and \$10 million each year through FY 10. We urge you to include the entire authorized amount of \$15 million in the budget to demonstrate the President's commitment to this program which will assist us secure this funding during the Congressional appropriations process.


In FY 02, the federal government began providing grants to states for the establishment and improvement of PDMPs through the Department of Justice (DOJ) which to date has totaled \$36.5 million. While this program has helped combat prescription drug abuse, we believe, as the President does, that battling this problem is first and foremost a public health issue and therefore more appropriately handled by HHS. In addition, addressing a problem this complex should be done through an authorized program such as NASPER which was fully vetted by Congress. DOJ has acknowledged that NASPER is now law and has pledged to work with HHS to ensure what we hope will be a smooth transition from one agency to another.

Because of the strict timetable set forth in NASPER, it is vital funding be included in the FY 07 budget to ensure HHS is able to promulgate regulations and seek public input, thereby allowing the agency to award grants the same year. Given the existence of NASPER, it is inappropriate to fund the current DOJ program which was never authorized. Doing so will not only create confusion among states applying for funding, but to both DOJ and HHS as they try to administer similar programs.


January 10, 2006  
Page 2


We appreciate your assistance in this matter and we look forward to working with you to ensure NASPER is fully funded in FY 07.

Sincerely,


  
\_\_\_\_\_  
Joe Barton  
Member of Congress


  
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John Dingell  
Member of Congress


  
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Ed Whitfield  
Member of Congress


  
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Frank Pallone  
Member of Congress

  
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Charlie Norwood  
Member of Congress

  
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Ted Strickland  
Member of Congress

  
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Nathan Deal  
Member of Congress

  
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Sherrod Brown  
Member of Congress

  
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Ralph Hall  
Member of Congress

  
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Bart Stupak  
Member of Congress


  
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Michael Bilirakis  
Member of Congress

  
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Eliot Engel  
Member of Congress



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Fred Upton  
Member of Congress



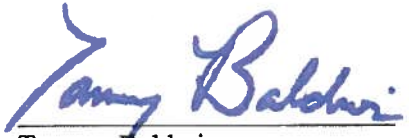
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Charles Gonzalez  
Member of Congress



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John Shimkus  
Member of Congress



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Tammy Baldwin  
Member of Congress



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Charles "Chip" Pickering  
Member of Congress



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Mary Bono  
Member of Congress



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Anne Northup  
Member of Congress



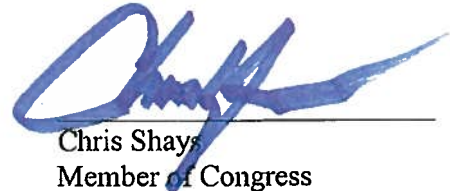
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Mike Ferguson  
Member of Congress



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Mike Rogers  
Member of Congress



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Chris Shays  
Member of Congress